

**NEVADA STATE WELFARE DIVISION
CHILD SUPPORT ENFORCEMENT REGULATIONS WORKSHOP
APRIL 28, 2004**

STAFF PRESENT:

Nancy K. Ford, Administrator
Gary Stagliano, Deputy Administrator, Program & Field Operations
Leland Sullivan, Chief, Child Support Enforcement
David Castagnola, Child Support Program Specialist
Leslee Arnold, Child Support Program Specialist
Miki Primus, Child Support Program Specialist
Margie Adams, Child Support Enforcement Program Office Manager
Don Winne, Deputy Attorney General
Sandee Wyand, Field Services Manager
Lynette Giles, Executive Assistant
Robin Roach, Administrative Assistant

GUESTS PRESENT:

Susan Hallihan, Washoe County District Attorney's Office, Child Support Division
Paul Carelli III, Italian Government
Assemblywoman Barbara Buckley
Veronica Thompson, Clark County Legal Services
Alana Hatch, Clark County District Attorney Family Support
Randall Walker, Clark County District Attorney Family Support
Marshal S. Willick, Esq., Clark County District Attorney Office
Maria Perez, Law Offices of Frances Ann Fine
Sue Berfield, Clark County District Attorney Family Support
C.A. Watts, Clark County District Attorney Family Support
Bob Teuton, Clark County District Attorney's Office

Ms. Ford opened the Child Support Enforcement Workshop at 10:04 a.m. She welcomed everyone and explained the workshop is to discuss penalties for delinquent child support obligors. Ms. Ford explained the 2003 Legislature wanted the penalty information in policy form and active before the beginning of the 2005 legislative session. Agency staff will review their proposals and then public comment will be taken.

I. Child Support Enforcement Program Workshop:

Mike Primus stated staff have been working on the penalty policies for some time. She reviewed the Child Support penalty handout. The projected implementation for the policy is July 1, 2004. Nevada will implement its penalties, with or without cooperation from other states. She explained the entire penalty amount will be given to the custodial parent and no penalties will be retained by the state. Notification of the penalties incurred by delinquent support payments will be available on the Child Support Enforcement application and web-site. The obligor will be assessed a 10% penalty and given notification of such before they are assessed. Ms. Primus presented a chart showing possible case scenarios for different penalties. An annual assessment was discussed previously and after discussion with different District Attorney's, it was re-evaluated to a monthly assessment to make it easier to track. The purpose of the penalties is to attach a negative consequence to not paying child support.

Alana Hatch and Randall Walker testified they would like to clarify the penalty policy to ensure they can defend it in Family Court and explained the policy must match statutory obligations. In the research of the statute, Ms. Hatch found the 10% penalty is the assessment per annum. She focused on two points; the 10% per annum, which Ms. Hatch believes cannot be ignored, and the phrase, "in portion thereof". Her understanding is the 10% penalty is a yearly, not a monthly, calculation and "a portion thereof" as each portion of the year the delinquent monies remain unpaid. Her interpretation of the statute is different from the states, but she is confident it matches the statute.

Mr. Walker reviewed the statute from a CPA's point of view and came up with the finding to charge a simple interest amount for each month the delinquent amount remains unpaid. Ms. Ford asked if their findings show the interest on the unpaid month equal to 10% of the delinquent amount. Mr. Walker said this charge would not be the full 10% for the year, due to the interest being charged monthly instead of annually. Ms. Ford asked how the penalty would then differ from interest. Ms. Hatch stated her understanding of the statute is as a simple interest calculation and reviewed the penalty charge Ms. Primus introduced earlier. Ms. Ford asked if the first month's delinquency penalty assessment appeared correct; Ms. Hatch agreed, but stated the amount would end up being incorrect at the end of the year. Ms. Ford stated the penalty is separate from interest, is supposed to be a negative consequence for not paying child support and one month at 1/12 of 10% is not much of a consequence for not paying child support.

Mr. Walker explained he and Ms. Hatch took the approach from the statute and he agreed 1/12 of 10% of a penalty is not a consequence, but again stated this is what the statute states. Ms. Hatch also brought up the fact the obligation of 1/12 would not cover the entire year (per annum), as the first month's delinquency is not assessed a penalty. Ms. Ford restated her concerns about the statute versus legislative intent for

child support penalties and keeping interest and penalties separate. She stated information from the Legislative committee minutes, said the language in the statute skews legislative intent and has concerns about going before the next Legislative session with the incorrect policy. Ms. Hatch again stated her concerns about the language in the statute are her main concern. Ms. Ford said the language, 10% per annum or thereof, could be construed as 10% per month until the amount is paid. Mr. Walker commented if he were doing an accounting audit on this type of case, it would not pass the audit. He also stated if the penalty policy does not meet the statute, it will not pass an audit. It was decided legislative intent and the statute do not match. Mr. Stagliano said the non-custodial parent (NCP) needs to be current on payments and stay current; the statute has different connotations for different agencies. Ms. Hatch said she does not disagree, but if the 1/12 of 10% per month penalty remains unpaid for the year, the yearly penalty will be incorrect by 1/12 of 10%. She is uncomfortable with staff's proposals for penalties because the statutory implications could be different than legislative intent.

Ms. Ford explained she agrees with the statutory implications, she is also faced with system changes which could delay processing the policy by the end of this state fiscal year, as mandated by the legislature. Mr. Winne said while the amounts are close, the penalty will not be equal to 10% if interest is accrued monthly. A cumulative effect could be a penalty affecting NCP's for years, even if they are keeping current after a delinquency, they will still be paying the percentage to the current support, as opposed to the straight penalty. Ms. Hatch explained she wants to be sure the state has a clear understanding of their statutory concerns for both a legal and accounting standpoints. Ms. Ford asked if Ms. Hatch agreed if interest on the arrearages and penalties should both be charged to the NCP. Ms. Hatch said they see those as separate and distinct charges and would not charge interest on both.

Veronica Thompson, Domestic Violence Program, Clark County Social Services, thanked staff for taking necessary steps to ensure Child Support interest and penalty issues are addressed. She stated the methodology for calculating interest should be available to those being assessed interest so they have a clear understanding of why they are being charged for. The penalty should also take into consideration the amount of the penalty and accrual. The interest and penalties should be considered as principal and interest charged on the full principal amount, including the penalty. Their office agrees with Clark District Attorney about the statutory statements made.

Marshall Willick, Esq., stated the family court has been calculating interest and penalties on delinquent Child Support since about 1990. There have been several challenges to how penalties and interest are assessed to delinquent payors. While the example given shows the penalty amounts correctly, it does not include due dates. If the examples are recalculated, the total penalty amount assessed would be lowered annually. He stated he agrees with the Clark County's District Attorney's Office and the statutory language cannot be ignored. The use of interest as a penalty for non-payment of child

support is widely accepted. He is also concerned about undue penalties for those who pay each month, but are late and that the policy will not hold up in court. He would also like to have a universal penalty policy between the state, court masters, and family court. He explained the difference in scenarios between different penalty assessments in the three areas. Ms. Ford replied the penalty is not tied to a date when child support is due, but penalized after one month of arrears has accrued. She has run the figures and it has always come out the same, but the statute is vague. She does not want to implement incorrect policy, just to have to change it after the next legislative session. Mr. Willick stated how he came up with his recalculated figures.

Leland Sullivan explained the state's Child Support Enforcement Program provides services to families either receiving or have received TANF benefits. Each case has different types of arrearages, which are paid by federally mandated categories. He explained how the federal guidelines work and arrears applied. Ms. Ford clarified the federal distribution mandate for arrears. Mr. Willick stated, if he understood correctly, the issue with the federal arrearage default should not exist and he explained his understanding of the statute and federal arrearages. He stated the family court does not allow penalties and interest to be counted together and will separate the amounts due to the family and the court. Ms. Ford and Mr. Willick briefly discussed accrual of penalties and interest on delinquent child support payments.

Mr. Stagliano said the idea behind this statute is to make the NCP pay their child support timely from now on and not to bury them with penalties and interest, which may make them more likely to neglect their responsibility to pay child support. Mr. Willick stated there is undue hardship on the NCP, as there is a provision in the statute to relieve interest payments on past due amounts. Family court will waive interest on past due child support occasionally, but there is no provision to relieve penalties. He said he would be available to contribute any information he has to state staff to help them come up with a good penalty policy.

Ms. Thompson stated their main interest is treating all children equally for child support payments. Ms. Ford thanked her for her comments.

Bob Tueton, Assistant Clark County District Attorney, commented Ms. Hatch stated their case well. However, he would like to comment on the policy, stating the policy adopted must allow all the district attorney's to defend a judgment and he would like an Attorney General's opinion on the policy.

Assemblywoman Barbara Buckley, added many times the legislature means to do one thing and the statutes state something else and cannot imagine the 2005 Legislature will make the division make more system changes, even if the statutory changes do not agree with legislative intent.

Susan Hallihan, Washoe District Attorney's Office, mirrored Mr. Tueton's opinion about an Attorney General's opinion being published in order to be able to defend the penalty policy in court. While she also agrees with Ms. Hatch, she sees the problem with an accrued penalty and supports a one time fee. She also would like to see the state's District Attorney's testify before the 2005 Legislature to change this statute.

Ms. Ford stated the legislative intent on child support penalties is very clear, but the wording in the statute is not as clear as it was intended to be. Staff will discuss this issue further before implementing any policy. A public hearing is set for June 18th to further discuss this matter and information will be distributed before the hearing for review.

II. General Public Comments:

None received.

Ms. Ford thanked everyone in attendance for their participation in the Public Workshop. Hearing no further comments, Ms. Ford closed the Public Workshop at 11:10 a.m.